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No. 307.

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Supreme Court of the United States.

OCTOBER TERM, 1945.

RICHARD T. GREEN COMPANY, M. THOMAS
GREEN, TRUSTEE OF M. THOMAS GREEN
TRUST, AND THE FIRST NATIONAL BANK OF
BOSTON,

Petitioners,

v.

CITY OF CHELSEA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI.

MICHAEL H. SULLIVAN,
Counsel for Respondent.

JOSEPH ISRAELITE,
Of Counsel.

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Opinions Below.

The opinion of the District Court for the District of Massachusetts relating to the question presented by the Petition is to be found in the Record at pages 93, 94 to 96, and is reported in *United States v. Five Acres of Land et al.*, 56 Fed. Supp. 628, 629 to 631.

The opinion of the Circuit Court of Appeals for the First Circuit affirming the judgment of the District Court

is to be found in the Record at pages 123, 125, 127 to 132, and is reported in 149 F. (2d) 927.

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under section 240 (a) of the Judicial Code, as amended, United States Code, Title 28, sec. 347 (a).

Supplementary Statement of the Case.

The action in the Land Court of Massachusetts referred to in the Petition at page 4 was decided on June 15, 1945, and the Decision of the Land Court is to be found in Appendix A of this brief, at page 7.

The specific question presented by the Petition (at page 5) is "whether the Circuit Court of Appeals ought to have granted the petitioners' prayer for a rehearing 'to be held after the final determination of the above-mentioned Land Court proceedings either by a judgment of the Land Court not appealed from or by a decision of the Supreme Judicial Court on appeal.' " It would appear, however, that the fundamental contention of the petitioners (*cf.* Petition, pp. 3 and 5) is that "the Circuit Court of Appeals has decided an important matter of Massachusetts law in a way probably in conflict with applicable local decisions in that it has held the cradle and hoisting machinery to be taxable as real estate."

Statute Involved.

The statute of the Commonwealth of Massachusetts bearing upon the issue raised by the petitioners is as follows:

General Laws (Ter. Ed.) c. 59, sec. 3: "Real estate for the purpose of taxation shall include all land within the commonwealth and all buildings and other things erected thereon or affixed thereto."

Argument.

First Point: IT IS SUBMITTED THAT NEITHER THE RECORD, THE PETITION NOR THE BRIEF IN SUPPORT OF THE PETITION AFFORDS ANY BASIS FOR THE PETITIONERS' CONTENTION THAT THE CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF MASSACHUSETTS LAW IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE LOCAL DECISIONS.

This issue deals with that portion of the opinion of the Circuit Court of Appeals which held that the aggregation of the component parts of the marine railway—the cradle, the machinery, the foundation and the track—was an entity properly assessed as real estate within the coverage of Gen. Laws (Ter. Ed.) c. 59, sec. 3 (Record, pp. 129, 130).

Three different Courts in the Commonwealth—two Federal and one State—have passed upon the issue raised by the petitioners. The decisions and opinions of all three Courts have carefully reviewed pertinent local decisions, including cases in the Supreme Judicial Court and in intermediate State Courts. These decisions go back to *Boston Manufacturing Company v. Newton*, 22 Pick. (Mass.) 22, decided in 1839, and down to *Franklin v. Metcalfe*, 307 Mass. 386, decided in 1940. They include cases from the Massachusetts Board of Tax Appeals and Appellate Tax Board. *Crocker-McElwain Company v. Board of Assessors of Holyoke*, 2 Mass. Board of Tax Appeals Appellate Tax Board Reports, 159. They include cases from the Massachusetts Superior Court. *Hamilton Manufacturing Company v. Lowell* (see Record, p. 130, note 6).

In the course of its opinion the Circuit Court of Appeals made an analysis of cases cited by the petitioners; some of these decisions are shown to support the respondent's interpretation of the statute involved, and others are not in point. *Cf.* Record, pp. 128 to 131, and Brief in Support of Petition, pp. 9 and 10; see Appendix A, pp. 10 and 11.

The respondent submits that the various factors which impressed the Court (Record, p. 129; Brief in Support of Petition, p. 10) warranted the conclusion, in conformity with the applicable state law, that the marine railway as an entity was properly assessed as real property within the meaning of Gen. Laws (Ter. Ed.) c. 59, sec. 3. It is therefore contended that the cases cited in Brief in Support of Petition at pages 13 to 16 do not bear out the argument of the petitioners.

Second Point: THE FACT THAT THE PETITIONERS HAVE APPEALED FROM THE DECISION OF THE LAND COURT (PETITION, P. 4) TO THE SUPREME JUDICIAL COURT DOES NOT INDICATE THAT THE CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF MASSACHUSETTS LAW IN A WAY *probably* IN CONFLICT WITH APPLICABLE LOCAL DECISIONS.

The respondent submits that the applicable local law has been invoked by the Circuit Court of Appeals. It may be *possible* that the Supreme Judicial Court will overrule a principle of law which has been followed for more than a hundred years in the Commonwealth. It is not *probable*. Under such circumstances, the possibility of reversal by the Supreme Judicial Court remains a matter of conjecture, particularly when the applicable law has been authoritatively declared, not only by intermediate Courts but also by the highest State Court itself.

Cf. West v. American Telephone & Telegraph Company, 311 U.S. 223, 237.

Third Point: THE RESPONDENT SUBMITS THAT THE CIRCUIT COURT OF APPEALS DID NOT ERR IN DENYING THE FIRST AND SECOND PRAYERS OF THE PETITIONERS' PETITION FOR REHEARING (Record, pp. 153, 154).

On this point the petitioners admit: "We recognize that this proposition goes somewhat beyond any adjudicated decision of this Court" (Brief in Support of Petition, p. 12). Immediately following, however, the petitioners argue that this proposition is supported in principle by this Court's decisions and by the demands of practical justice in the present case.

The respondent submits that neither the decisions quoted nor the demands of practical justice call for this Honorable Court to interfere in a case where the Circuit Court of Appeals has followed the ascertainable and applicable local law as enunciated by the highest State Court and as declared by the Massachusetts Land Court in its Decision on June 15, 1945.

The latest of the series of cases cited by the petitioners does not support the petitioners' proposition (*Huddleston v. Dwyer*, 322 U.S. 232, 235, 236). In that case an opinion of the Oklahoma Supreme Court, handed down after the denial of a petition for rehearing in the Circuit Court of Appeals, had at least raised such doubt as to the applicable Oklahoma law as to require its re-examination in the light of that opinion before pronouncement of a final judgment in the case by the Federal Courts. In the case at bar, however, there is no local decision which raises a doubt as to the applicable state law. There is no persuasive evidence that the Supreme Judicial Court will reverse the decision of the Land Court based upon applicable local law and decide the question contrary to the judgment of the United States District Court which was affirmed by the Circuit Court of Appeals.

“Where an intermediate appellate state court rests its considered judgment upon the rule of law which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise.”

West v. American Telephone & Telegraph Company, 311 U.S. 223, 237.

Conclusion.

THE RESPONDENT SUBMITS THAT THE CIRCUIT COURT OF APPEALS HAS NOT DECIDED A QUESTION OF MASSACHUSETTS LAW IN A WAY PROBABLY IN CONFLICT WITH APPLICABLE LOCAL DECISIONS; THAT THE CONTENTION OF THE PETITIONERS IS NOT GIVEN ANY ADDITIONAL WEIGHT BECAUSE OF THE FACT THAT THEY HAVE APPEALED FROM THE DECISION OF THE LAND COURT TO THE SUPREME JUDICIAL COURT; AND THAT THE CIRCUIT COURT OF APPEALS PROPERLY DENIED THE FIRST AND SECOND PRAYERS OF THE PETITIONERS' PETITION FOR REHEARING.

THE RESPONDENT RESPECTFULLY SUBMITS THAT THE PETITION FOR WRIT OF CERTIORARI IN THIS CASE SHOULD BE DENIED.

Respectfully submitted,

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Counsel for Respondent.

JOSEPH ISRAELITE,
Of Counsel.